

PART He-M 522 ELIGIBILITY DETERMINATION AND SERVICE PLANNING FOR  
INDIVIDUALS WITH AN ACQUIRED BRAIN DISORDER

Statutory Authority: RSA 137-K:3

He-M 522.01 Purpose. The purpose of these rules is to establish standards and procedures for the determination of eligibility, the development of service agreements, and the provision and monitoring of services that maximize the ability and decision-making authority of persons with acquired brain disorder, and promote each individual's personal development, independence, and quality of life in a manner that is determined by the individual.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.02 Definitions. The words and phrases used in these rules shall mean the following:

- (a) "Acquired brain disorder" means a disruption in brain functioning that:
  - (1) Is not congenital or caused by birth trauma;
  - (2) Presents a severe and life-long disabling condition which significantly impairs a person's ability to function in society;
  - (3) Occurs prior to age 60;
  - (4) Is attributable to one or more of the following reasons:
    - a. External trauma to the brain as a result of:
      - 1. A motor vehicle incident;
      - 2. A fall;
      - 3. An assault; or
      - 4. Another related traumatic incident or occurrence;
    - b. Anoxic or hypoxic injury to the brain such as from:
      - 1. Cardiopulmonary arrest;
      - 2. Carbon monoxide poisoning;
      - 3. Airway obstruction;
      - 4. Hemorrhage; or
      - 5. Near drowning;
    - c. Infectious diseases such as encephalitis and meningitis;
    - d. Brain tumor;

- e. Intracranial surgery;
- f. Cerebrovascular disruption such as a stroke;
- g. Toxic exposure; or
- h. Other neurological disorders, such as Huntington's disease or multiple sclerosis, which predominantly affect the central nervous system; and

(5) Is manifested by:

- a. Significant decline in cognitive functioning and ability; and/or
- b. Deterioration in:
  - 1. Personality;
  - 2. Impulse control;
  - 3. Judgment;
  - 4. Modulation of mood; or
  - 5. Awareness of deficits.

(b) "Advanced crisis funding" means revenue that is authorized by the bureau pursuant to He-M 522.15 (n) when funds are not otherwise available for an individual who is in crisis and needs services immediately.

(c) "Applicant" means any person with an acquired brain disorder, or such person's guardian, who requests services pursuant to He-M 522.04.

(d) "Area agency" means an entity established as a nonprofit corporation in the state of New Hampshire which is established by rules adopted by the commissioner to provide services to persons with acquired brain disorders in the area.

(e) "Area agency director" means that person who is appointed as executive director or acting executive director of an area agency by the area agency's board of directors.

(f) "Bureau" means the bureau of developmental services of the department of health and human services.

(g) "Bureau administrator" means the chief administrator of the bureau of developmental services.

(h) "Commissioner" means the commissioner of the department of health and human services.

(i) "Community supports" means services administered through the Brain Injury Association of New Hampshire that:

- (1) Are provided to persons with an acquired brain disorder who are eligible for services pursuant to He-M 522.03 (a) but do not meet the eligibility criteria in He-M 517.03 (a) for Medicaid home- and community-based care; and

(2) Include, at a minimum the following services when such services are not reimbursable by Medicaid or other insurance:

- a. Home modification;
- b. Respite service;
- c. Assistive technology;
- d. Specialized equipment;
- e. Transportation;
- f. Short-term financial assistance, such as for utilities or rent;
- g. Therapeutic evaluations; and
- h. Other similar limited or nonrecurring services necessary for an individual to live as safely and independently as possible in his or her community.

(j) "Consolidated services" means a service arrangement whereby the individual or representative directs the services and makes the decisions about how the funds available for the individual's services are to be spent. It includes assistance and resources to individuals in order to maintain or improve their opportunities and experiences in living, working, socializing, and recreating. It does not include financial arrangements whereby all the budgeted funds are designated to a congregate living arrangement or program.

(k) "Department" means the department of health and human services.

(l) "Developmental disability" means "developmental disability" as defined under RSA 171-A:2, V, namely, "a disability:

(1) Which is attributable to intellectual disability, cerebral palsy, epilepsy, autism or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

(2) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe disability to such individual's ability to function normally in society."

(m) "Guardian" means a person appointed pursuant to RSA 463 or RSA 464-A or who is a parent of an individual under the age of 18 who is not an emancipated minor.

(n) "Individual" means a person with an acquired brain disorder who is eligible to receive services pursuant to He-M 522.03.

(o) "Informed consent" means a decision made voluntarily by an individual or applicant for services or, where appropriate, such person's legal guardian, after all relevant information necessary to making the choice has been provided, when the person understands that he or she is free to choose or refuse any available alternative, when the person clearly indicates or expresses his or her choice, and when the choice is free from all coercion.

(p) “Medicaid home- and community-based care services” means services provided in accordance to He-M 517.

(q) “Mental illness” means a condition of a person who is or has been determined severely mentally disabled in accordance with He-M 401.05 through He-M 401.07 and who has at least one of the following psychiatric disorders classified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), July 2000:

- (1) Schizophrenia and other psychotic disorders;
- (2) Mood disorders;
- (3) Borderline personality disorder;
- (4) Post traumatic stress disorder;
- (5) Obsessive compulsive disorder;
- (6) Eating disorder;
- (7) Dementia, where the psychiatric symptoms cause the functional impairments and one or more of the following co-morbid symptoms exist:
  - a. Anxiety;
  - b. Depression;
  - c. Delusions;
  - d. Hallucinations; and
  - e. Paranoia; and
- (8) Panic disorder.

(r) “Personal profile” means a narrative description that includes:

- (1) A personal statement from the individual and those who know him or her best that summarizes the individual’s strengths and capacities, communication and learning style, challenges, needs, interests, and any health concerns, as well as the individual’s hopes and dreams;
- (2) A personal history covering significant life events, relationships, living arrangements, health, and use of assistive technology, and results of evaluations which contribute to an understanding of the person’s needs;
- (3) A review of the past year that:
  - a. Summarizes the individual’s:
    1. Personal achievements;
    2. Relationships;
    3. Degree of community involvement;
    4. Challenging issues or behavior;

5. Health status and any changes in health; and

6. Safety considerations during the year;

b. Addresses the previous year's goals regarding level of success and, if applicable, identifies any obstacles encountered;

c. Identifies the individual's goals for the coming year;

d. Identifies the type and amount of services the individual receives and the support services provided under each service category;

e. Identifies the individual's health needs;

f. Identifies the individual's safety needs;

g. Identifies any follow-up action needed on concerns and the persons responsible for the follow-up; and

h. Includes a statement of the individual's and, if applicable, the guardian's satisfaction with services;

(4) An attached work history of the person's paid employment and volunteer positions, as applicable, that includes:

a. Dates of employment;

b. Type of work;

c. Hours worked per week; and

d. Reason for leaving, if applicable; and

(5) A reference to sensitive historical information in other sections of the chart when the individual or guardian, as applicable, prefers not to have this included in the profile.

(s) "Provider" means a person receiving any form of remuneration for the provision of services to an individual.

(t) "Provider agency" means an area agency or another entity under contract with an area agency to provide services.

(u) "Region" means a geographic area established by He-M 505.04 for the purpose of providing services to developmentally disabled persons and that provides services to persons with acquired brain disorder.

(v) "Service" means any paid assistance to the individual in meeting his or her own needs provided through the area agency.

(w) "Service agreement" means a written agreement between the individual or guardian and the area agency that describes the services that an individual will receive.

(x) "Service coordinator" means a person who is chosen or approved by an individual and his or her guardian and designated by the area agency to organize, facilitate, and document

service planning and to negotiate and monitor the provision of the individual's services and who is:

- (1) An area agency service coordinator, or any other area agency or provider agency employee;
- (2) A member of the individual's family;
- (3) A friend of the individual; or
- (4) Another person chosen to represent the individual.

(y) "Service planning meeting" means a gathering of 2 or more people, one of whom is the individual who receives services unless he or she chooses not to attend, called to develop, review, add to, delete from, or otherwise change a service agreement.

(z) "Supports Intensity Scale" means a nationally recognized assessment tool published by the American Association on Intellectual and Developmental Disabilities that evaluates practical support requirements of a person with an intellectual disability or acquired brain disorder.

(aa) "Termination" means the cessation of a service by an area agency director with or without the informed consent of the individual or his or her guardian.

(ab) "Vacancy" means funds that become available when an individual stops receiving acquired brain disorder services.

(ac) "Withdrawal" means the choice of an individual or his or her guardian to discontinue that individual's participation in a service.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

#### He-M 522.03 Eligibility for Services.

(a) Any resident of New Hampshire who has an acquired brain disorder pursuant to He-M 522.02 (a) shall be eligible for service coordination and community support.

(b) Individuals described in (a) above shall also be eligible for Medicaid home- and community-based care services if they meet the requirements of He-M 517.03 (a).

(c) Any applicant for services whose suspected acquired brain disorder occurred prior to age 22 shall be evaluated pursuant to He-M 503.05 to determine whether he or she has a brain injury that meets the criteria for developmental disability. If the applicant has a developmental disability, he or she shall be provided services pursuant to He-M 503.10. If the applicant is determined not to have a developmental disability, he or she shall be evaluated for eligibility pursuant to He-M 522.05.

(d) Eligibility for services shall be reviewed pursuant to He-M 522.07.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

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He-M 522.04 Application for Services.

- (a) Application for services shall be made by an applicant or an applicant's guardian.
- (b) An application for services shall be made in writing to the area agency in the applicant's region of residence.
- (c) An area agency shall explain the eligibility process and offer assistance to the applicant or guardian in making application for services.
- (d) The area agency shall inform the applicant or guardian of its roles and responsibilities and provide information about:
  - (1) Evaluation;
  - (2) Eligibility determination;
  - (3) Service coordination;
  - (4) Service agreement development and review;
  - (5) Services provided by the area agency and how service needs are identified;
  - (6) Service provision; and
  - (7) Service monitoring.
- (e) An area agency shall request each applicant to authorize release of information to permit the area agency to access relevant records and information regarding the applicant's:
  - (1) Acquired brain disorder;
  - (2) Personal, family, social, educational, neuropsychological, medical and rehabilitation history; and
  - (3) Functional abilities, interests, and aptitudes.
- (f) Authorization to release information shall specify:
  - (1) The name of the applicant and the information to be released;
  - (2) The name of the person or organization being authorized to release the information;
  - (3) The name of the person or organization to whom the information is to be released; and
  - (4) The time period for which the authorization is given, which shall not exceed one year.

(g) To provide comprehensive, efficient, and coordinated services, the area agency shall undertake an assessment of the public and private benefits and resources that are available to the applicant.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.05 Determination of Eligibility as a Person with an Acquired Brain Disorder.

(a) The area agency shall determine if an applicant is eligible for services under He-M 522.03 (a) by:

(1) Completing a review of available assessments of the applicant's physical, intellectual, cognitive, and behavioral status and an age-appropriate standardized functional assessment; or

(2) If the information available is not adequate to make a determination, coordinating additional physical, neuropsychological, neurological, functional, and behavioral assessments and evaluations as necessary to make the determination.

(b) Within 15 business days after the receipt of the application, the area agency shall review the information it has obtained regarding an applicant and make a decision on the applicant's eligibility. If the information required to determine eligibility cannot be obtained within the 15 business day period, the area agency shall request an extension from the applicant or guardian, state the reason for the delay, and obtain approval from the applicant or guardian in writing. This extension shall not exceed 30 business days after the receipt of application.

(c) In cases where the information on eligibility under He-M 522.03 (a) is inconclusive, the area agency may consult the bureau regarding determination of eligibility. If it is anticipated that eligibility will not be determined within the 15 business day period stated in (b) above, the area agency shall request an extension from the applicant or guardian, state the reason for the delay and, if the applicant or guardian approves, obtain such approval from the applicant or guardian in writing. This extension shall not exceed 30 business days after the receipt of application.

(d) If the area agency request for an extension pursuant to (b) or (c) above is denied by the applicant or guardian, the area agency shall determine the applicant to be ineligible for services and shall notify the applicant of the right to appeal as identified in He-M 522.19. The individual or guardian may reapply for services pursuant to (i) below.

(e) An area agency may determine an applicant eligible for services pursuant to He-M 522.03 (a) prior to the receipt of all components of an applicant's evaluation if there is sufficient information to make this determination. The area agency shall continue to pursue all components of the evaluation, which shall be completed within 30 business days of application and shall be kept in permanent files established for each applicant.

(f) The area agency director shall authorize appropriate services to be provided prior to the completion of the eligibility determination process if such services are necessary to protect the health or safety of an applicant whom the area agency director believes is likely to have an acquired brain disorder, based upon available information.



(g) For an applicant found ineligible under He-M 522.03 (a), within 3 business days of determination, the area agency shall provide the applicant or guardian a written decision that describes the specific legal and factual basis for the denial, including specific citation of the applicable law or department rules, and advise the applicant in writing and verbally of the appeal rights under He-M 522.19.

(h) For an applicant found eligible under He-M 522.03 (a), within 3 business days the area agency shall:

(1) Make a written referral to the bureau for additional determination of eligibility under He-M 522.06 (a); and

(2) Notify the individual or guardian, if applicable, in writing regarding his or her eligibility for service coordination and that the application is being forwarded to the bureau for eligibility determination under He-M 522.06 (a).

(i) Following denial of eligibility, the individual, family, or guardian, as applicable, may reapply for services if new information regarding the diagnosis, level of care, or severity of the disability or functional impairment related to the acquired brain disorder becomes available.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.06 Determination of Eligibility for Medicaid Home- and Community-Based Care Services.

(a) For those persons found eligible under He-M 522.03 (a), the bureau shall review the referral made pursuant to He-M 522.05 (h)(1) and shall, within 15 business days of receipt of the referral, make a decision on eligibility under He-M 522.03 (b). This decision shall be conveyed to the applicant and guardian, if applicable, in writing and include the specific legal and factual basis for the determination, including specific citation of the applicable law or department rule.

(b) Within 3 business days of receipt of the bureau's determination regarding an applicant's eligibility under He-M 522.03 (b), an area agency shall issue written notice to the applicant and guardian, if applicable, as follows:

(1) For an applicant eligible for services under He-M 522.03 (b), notice shall include the name of the area agency contact person and state that the applicant is eligible under He-M 522.03 (a) for service coordination and He-M 522.03 (b) for Medicaid home- and community-based care services;

(2) For an applicant not eligible under He-M 522.03 (b), notice shall include:

a. The specific legal and factual basis for the determination, including specific citation of the applicable law or department rule; and

b. Written and verbal notice of the appeal rights under He-M 522.19.

(c) Following denial of eligibility, the individual, family, or guardian, as applicable, may reapply for services if new information regarding the diagnosis, level of care, or severity of the disability or functional impairment related to the acquired brain disorder becomes available.

(d) The determination of eligibility under He-M 522 by one area agency shall be accepted by every other area agency of the state.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

#### He-M 522.07 Periodic Review of Eligibility.

(a) If there is reason to believe that the individual's level of cognitive functioning or adaptive behavior has changed and the person no longer has an acquired brain disorder as defined in He-M 522.02 (a), or a need for services pursuant to He-M 517.03 (a) (4) b., the area agency shall notify the individual receiving services, or the guardian if the individual has one, and arrange for a reassessment of eligibility. The individual or guardian shall have the right to submit additional evaluations, letters, or other information regarding continued eligibility which shall be considered by the area agency or bureau prior to issuing a decision.

(b) If the results of the above reassessment demonstrate that the person no longer meets the criteria for eligibility in He-M 522.03 (a) or (b), the area agency shall inform the person or guardian in writing of the determination and phase out the relevant services over the 12 months following the redetermination.

(c) Written notification to the person or guardian shall include the basis of the reason(s) for redetermination, including specific citation of the applicable law or department rule, the right to appeal, and the process for appealing the decision, including the names, addresses, and phone numbers of the office of client and legal services and advocacy organizations, such as the New Hampshire Disabilities Rights Center, that the individual or guardian may contact for assistance in appealing the decision.

(d) A person or guardian may appeal a denial of eligibility based on redetermination pursuant to He-M 522.19 or He-M 517.09.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10 (from He-M 522.06)

#### He-M 522.08 Preliminary Recommendations for Services.

(a) For those applicants eligible for service coordination and community support under He-M 522.03 (a), within 5 business days of notification of eligibility the area agency shall:

(1) Designate an interim service coordinator to hold a planning session regarding the provision of services identified in He-M 522.10 (b); and

(2) Inform the individual verbally and in writing of his or her right to choose or approve a service coordinator in accordance with He-M 522.10 (a).

(b) For those applicants eligible for Medicaid home- and community-based care services under He-M 522.03 (b), within 5 business days of notification of eligibility the area agency shall:

(1) Designate an interim service coordinator to develop a service agreement with the individual in accordance with He-M 522.11 and He-M 522.12;

(2) Inform the individual verbally and in writing of his or her right to choose or approve a service coordinator in accordance with He-M 522.10 (a);

(3) Based on information obtained pursuant to He-M 522.05 (a), conduct sufficient preliminary planning with the individual and guardian, either at the time of intake or during subsequent discussions, to identify and document the specific services needed and the date on which services will begin; and

(4) Request funding for services from the bureau.

(c) To the extent that funds for this purpose are available and appropriated to the bureau by the Legislature and except as provided in He-M 522.15 (a), the bureau shall fund services within 90 days of completion of the preliminary planning required by (b)(3) above or within 90 days of the start date requested by the individual or guardian, whichever is later.

(d) If funding for the individual is not available but the individual needs and is ready to receive services currently, the area agency shall:

(1) Place the individual's name on the wait list in accordance with He-M 522.15 (e);

(2) Review available resources to provide partial assistance to the individual on an interim basis whenever possible;

(3) Assist the individual to access supports from sources external to the area agency; and

(4) Contact the individual or guardian quarterly to update information and document such contact.

(e) If the individual does not need services currently, but will during the current or following fiscal year, the area agency shall:

(1) Place the individual's name on the projected service needs list in accordance with He-M 522.15 (f); and

(2) Contact the individual or guardian quarterly to update information and document such contact.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10 (from He-M 522.07)

#### He-M 522.09 Service Guarantees on Services for Which Funds Are Available.

(a) All services shall:

(1) Be voluntary on the part of the individual;

(2) Be provided only after the informed consent of the individual or guardian;

(3) Comply with the rights of the individual established under He-M 310; and

(4) Facilitate as much as possible the individual's ability to determine and direct the services he or she will receive.

(b) All services shall be designed to:

- (1) Promote the individual's personal development and quality of life in a manner that is determined by the individual;
- (2) Meet the individual's needs in personal care, employment, adult education, and leisure activities;
- (3) Promote the individual's health and safety;
- (4) Protect the individual's right to freedom from abuse, neglect, and exploitation;
- (5) Increase the individual's participation in a variety of integrated activities and settings;
- (6) Provide opportunities for the individual to exercise personal choice, independence, and autonomy within the bounds of reasonable risks;
- (7) Enhance the individual's ability to perform personally meaningful or functional activities;
- (8) Assist the individual to acquire and maintain life skills such as managing a personal budget, participating in meal preparation, or traveling safely in the community; and
- (9) Be provided in such a way that the individual is seen as a valued, contributing member of his or her community.

(c) The environment in which an individual receives services shall promote the person's freedom of movement, ability to make informed decisions, self-determination, and participation in the community.

(d) An individual or guardian may select any person, any agency, or another area agency as a provider to deliver one or more of the services identified in the individual's service agreement. The area agency shall advise the individual and guardian verbally and in writing prior to the initial and yearly individual service agreement planning process under He-M 522.11 and He-M 522.12 that he or she has a right to choose his or her own provider(s). The area agency shall provide a state-wide list of service providers to individuals and guardians who wish to choose providers.

(e) All providers shall comply with the rules pertaining to the service(s) offered and meet the provisions specified within the individual's service agreement. Providers shall also enter into a contractual agreement with the area agency and operate within the limits of funding authorized by it.

(f) After discussions with the individual, guardian, and proposed or current provider, if the area agency determines that a provider chosen by the individual or guardian is a provider that proposes a service arrangement that is not in accordance with department rules, or is a provider that has not been in compliance with department rules in the past, the area agency shall:

- (1) Provide a written rationale to the individual or guardian stating the reasons why the area agency will not enter into a service contract with the provider; and
- (2) With input from the individual or guardian, identify another provider.

(g) After discussions with the individual, guardian, and proposed or current provider, if the area agency determines that a provider chosen by the individual or guardian is not implementing the service agreement, providing for the health and safety of the individual, or in complying with applicable rules while providing services, the area agency shall:

- (1) Terminate the service contract with the provider with a 30-day notice; and
- (2) With input from the individual or guardian, establish another service arrangement and amend the service agreement.

(h) If the area agency determines that a provider chosen by the individual or guardian is posing a serious threat to the health or safety of the individual, the area agency shall, with input from the individual or guardian, secure another provider and issue a notice to immediately terminate the service contract of the current provider, specifying the reasons for the action.

(i) The individual or guardian may appeal the area agency's decision under (f)–(h), above. At the time it provides notice, the area agency shall advise the individual or guardian in writing and verbally of his or her appeal rights under He-M 522.19.

(j) An area agency shall create service agreements for all individuals for whom funding for Medicaid home- and community-based care services is available pursuant to He-M 517.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10 (from He-M 522.08)

#### He-M 522.10 Service Coordination.

(a) The service coordinator shall be a person chosen or approved by the individual or guardian and approved by the area agency pursuant to paragraph (d) below, provided that the area agency shall retain ultimate responsibility for service coordination. The area agency shall advise the individual and guardian verbally and in writing prior to the preliminary planning stage under He-M 522.08 and prior to the initial and yearly individual service agreement planning process under He-M 522.11 and He-M 522.12 that he or she has a right to choose his or her own service coordinator, including one who is not employed by the area agency.

(b) For those individuals not eligible for Medicaid home- and community-based care services pursuant to He-M 517, the service coordinator shall:

- (1) Hold a planning session to identify service needs and goals and appropriate community resources;
- (2) Make appropriate referrals to community agencies; and
- (3) Advocate on behalf of the individual for services to be provided in accordance with He-M 522.

(c) For those individuals eligible under He-M 517.03, the service coordinator shall:

- (1) Advocate on behalf of individuals for services to be provided in accordance with He-M 522.09 (b);
- (2) Coordinate the service planning process in accordance with He-M 522.09 and He-M 522.11;

(3) Describe to the individual or guardian service provision options such as consolidated services;

(4) Monitor and document services provided to the individual;

(5) Ensure the continuity and quality of services provided;

(6) Ensure that service documentation is maintained pursuant to He-M 522.12 (d)(1) and (g)(2)-(3);

(7) Determine and implement necessary action and document resolution when goals are not being addressed, support services are not being provided in accordance with the service agreement, or health or safety issues have arisen;

(8) Convene service planning meetings at least annually and whenever:

a. The individual or guardian is not satisfied with the services received;

b. There is no progress on the goals after follow-up interventions;

c. The individual's needs change; or

d. There is a need for a new provider; and

(9) Document service coordination visits and contacts pursuant to He-M 522.11 (j) and He-M 522.12 (g) (2)-(4).

(d) A service coordinator shall not:

(1) Be a guardian of the individual whose services he or she is coordinating;

(2) Have a felony conviction;

(3) Have been found to have abused or neglected an adult with a disability based on a protective investigation performed by the bureau of elderly and adult services in accordance with He-E 700 and an administrative hearing held pursuant to He-C 200, if such a hearing is requested;

(4) Be listed in the state registry of abuse and neglect pursuant to RSA 169-C:35 or RSA 161-F:49; or

(5) Have a conflict of interest concerning the individual, such as providing other direct services to the individual.

(e) If the service coordinator chosen by the individual or guardian is not employed by the area agency or its subcontractor the following requirements shall apply:

(1) The service coordinator and area agency shall enter into an agreement that describes:

a. The role(s) set forth in He-M 522.10 for which the service coordinator assumes responsibility;

b. The reimbursement, if any, provided by the area agency to the service coordinator; and

c. The oversight activities to be provided by the area agency;

(2) If the area agency determines that the service coordinator is not ensuring the implementation of the service agreement or is not fulfilling his or her obligations as described in the letter of agreement, the area agency shall revoke the designation of the service coordinator with a 30-day notice and designate a new service coordinator, with input from the individual or guardian, pursuant to He-M 522.10 (a); and

(3) If the area agency determines that a service coordinator chosen by the individual or guardian is posing a serious threat to the health or safety of the individual, the area agency shall terminate the designation of the service coordinator immediately upon issuance of written notice specifying the reasons for the action and designate a new service coordinator, with input from the individual or guardian, pursuant to He-M 522.10 (a).

(f) For individuals who receive both acquired brain disorder services and behavioral health services, service coordination shall be billed only by the area agency or behavioral health agency that is the primary service provider pursuant to He-M 426.15 (b).

(g) The role of service coordinator may, by mutual agreement, be shared by an employee of the area agency and another person. Such agreements shall be in writing and clearly indicate which functions each service coordinator will perform.

(h) The individual or guardian may appeal the area agency's decision under (e) (2) or (3) above pursuant to He-M 522.19. At the time it provides notice under (e) (2) or (3) above, the area agency shall advise the individual or guardian verbally and in writing of his or her appeal rights under He-M 522.19.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10 (from He-M 522.09)

He-M 522.11 Service Planning for Individuals Eligible for Medicaid Home- and Community-based Care Services.

(a) Once funding is identified for an individual, the service coordinator shall facilitate service planning to develop a service agreement in accordance with He-M 522.12.

(b) The service planning shall:

(1) Be a personalized and ongoing process to plan, develop, review, and evaluate the individual's services in accordance with the criteria set forth in He-M 522.09;

(2) Include identification by the individual or guardian and the individual's service providers of those services and environments that will promote the individual's health, welfare, and quality of life; and

(3) Include information obtained through utilization of the Supports Intensity Scale (SIS), which shall be administered for each individual:

a. Upon determination of the individual's eligibility; and

b. Either:

1. Every 5 years thereafter; or

2. When there is a significant life change in the individual's status or condition, as described in He-M 522.15 (l).

(c) The service coordinator shall, as applicable, maximize the extent to which an individual participates in and directs his or her service planning process by:

- (1) Explaining to the individual the service planning process and assisting the individual to determine the process within the scope of He-M 522;
- (2) Explaining to the individual his or her rights and responsibilities;
- (3) Eliciting information from the individual regarding his or her personal preferences and service needs, including any health concerns, that shall be a focus of service planning meetings;
- (4) Determining with the individual issues to be discussed during service planning meetings; and
- (5) Explaining to the individual the limits of the decision-making authority of the guardian, if applicable, and the individual's right to make all other decisions related to services.

(d) The individual or guardian may determine the following elements of the service planning process:

- (1) The number and length of meetings;
- (2) The location, date, and time of meetings;
- (3) The meeting participants; and
- (4) Topics to be discussed.

(e) In order to develop or revise a service agreement to the satisfaction of the individual or guardian, the service planning process shall consist of periodic and ongoing discussions and meetings that:

- (1) Include the individual and other persons involved in his or her life;
- (2) Are facilitated by a service coordinator; and
- (3) Are focused on the individual's abilities, health, interests, and achievements.

(f) The service planning process shall include a discussion of the need for guardianship. The area agency director shall implement any recommendations concerning guardianship contained in the service agreement.

(g) The service planning process shall include a discussion of the need for assistive technology that could be utilized to support any services or activities identified in the proposed service agreement regardless of the individual's current use of assistive technology.

(h) Service agreements shall be reviewed by the service coordinator with the individual or guardian at least once during the first 6 months of service and, thereafter, as needed. The annual review required by He-M 522.10 (b)(8) shall include a service planning meeting.



(i) The individual or guardian may request, in writing, a delay in an initial or annual service agreement meeting. The area agency shall honor this request.

(j) The service coordinator shall be responsible for monitoring services identified in the service agreement and for assessing individual, family, or guardian satisfaction at least annually for basic service agreements and quarterly for service agreements.

(k) An area agency director, service coordinator, service provider, individual, guardian, or individual's friend shall have the authority to request a service agreement meeting when:

- (1) The individual's responses to services indicate the need;
- (2) A change to another service is desired;
- (3) A personal crisis has developed for the individual;
- (4) The individual has experienced a significant life change; or
- (5) A service agreement is not being carried out in accordance with its terms.

(l) At a meeting held pursuant to (k) above, the participants shall:

- (1) Document whether and how to modify the service agreement; and
- (2) Identify any service needs, including those due to a significant life change, that are not currently funded.

(m) Service agreement amendments may be proposed at any time. Any amendment shall be made with the consent of the individual or guardian and the area agency.

(n) Service agreement amendments made as a result of a significant life change shall be implemented with the individual's or guardian's written approval except by mutual agreement between the area agency and the individual specifying a time limited extension.

(o) If the individual, guardian, or area agency director disapproves of the service agreement, the dispute shall be resolved by one or more of the following:

- (1) Informal discussions between the individual or guardian and service coordinator;
- (2) Reconvening a service planning meeting; or
- (3) The individual or guardian filing an appeal to the bureau pursuant to He-C 200.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.12 Service Agreements for Individuals Eligible for Medicaid Home- and Community-Based Care Services.

(a) The service coordinator shall convene a meeting to prepare a service agreement in accordance with (b)–(f) below within 20 business days of the determination that funding for services for an individual.

(b) If people who provide services to the individual are not selected by the individual to participate in a service planning meeting, the service coordinator shall contact such persons prior to the meeting so that their input can be considered.

(c) Copies of relevant evaluations and reports shall be sent to the individual and guardian at least 5 business days before service planning meetings.

(d) Within 10 business days following a service planning meeting pursuant to (a) above, the service coordinator shall:

(1) Prepare a written service agreement that:

a. Includes the following:

1. A personal profile; and
2. A list of those who participated in the service planning agreement meeting; and

b. Describes the following:

1. The specific support services to be provided under each service category;
2. The goals to be addressed, and timelines and methods for achieving them;
3. The persons responsible for implementing the service agreement;
4. Services needed but not currently available;
5. Any training needed to carry out the service agreement, beyond the staff training required by He-M 506.05 and other applicable rules, with the type and amount of such training to be determined by the service agreement participants;
6. Service documentation requirements sufficient to describe progress on goals and the services received;
7. If applicable, reporting mechanisms under self-directed services regarding budget updates and individual and guardian satisfaction with services; and
8. The individual's need for guardianship, if any;

(2) Contact all persons who have been identified to provide a service to the individual and confirm arrangements for providing such services; and

(3) Explain the service arrangements to the individual and guardian and confirm that they are to the individual's and guardian's satisfaction.

(e) Within 5 business days of completion of the service agreement, the area agency shall send the individual or guardian the following:

(1) A copy of the service agreement signed by the area agency executive director or designee;

(2) The name, address, and phone number of the service coordinator or service provider(s) who may be contacted to respond to questions or concerns; and

(3) A description of the procedures for challenging the proposed service agreement pursuant to He-M 522.19 for those situations where the individual or guardian disapproves of the service agreement.

(f) The individual or guardian shall have 10 business days from the date of receipt of the service agreement to respond in writing, indicating approval or disapproval of the service agreement. Unless otherwise arranged between the individual or guardian and the area agency, failure to respond within the time allowed shall constitute approval of the service agreement.

(g) When a service agreement has been approved by the individual or guardian and area agency director, the services shall be implemented and monitored as follows:

(1) A person responsible for implementing any part of a service agreement, including goals and support services, shall collect and record information about services provided and summarize progress as required by the service agreement or, at a minimum, monthly;

(2) On at least a monthly basis, the service coordinator shall visit or have verbal contact with the individual or persons responsible for implementing a service agreement and document these contacts;

(3) The service coordinator shall visit the individual and contact the guardian, if any, at least quarterly, or more frequently if so specified in the individual's service agreement, to determine and document:

a. Whether services match the interests and needs of the individual;

b. Individual and guardian satisfaction with services; and

c. Progress on the goals in the service agreement; and

(4) If the individual receives services under He-M 1001, He-M 521, or other residential licenses under RSA 151:2, I (e), at least 2 of the service coordinator's quarterly visits with the individual shall be in the home where the individual resides.

(h) The service coordinator and a licensed nurse shall visit the individual within 5 days of relocation to a new residence or change in a residential provider to:

(1) Determine if the transition has resulted in adverse changes in the health or behavioral status of the individual; and

(2) Develop and document a plan to remediate any issues, if negative changes are noted.

(i) Service agreements shall be renewed at least annually.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.13 Record Requirements for Area Agencies.

(a) Service coordinators or their designees shall maintain a separate record for each individual who receives services and ensure the confidentiality of information pertaining to the individual, including:

- (1) Maintaining the confidentiality of any personal data in the records;
- (2) Storing and disposing of records in a manner that preserves confidentiality; and
- (3) Obtaining a release of information pursuant to He-M 522.04 (f) prior to release of any part of a record to a third party.

(b) An individual's record shall include:

(1) Personal and identifying information, including the individual's:

- a. Name;
- b. Address;
- c. Date of birth; and
- d. Telephone number;

(2) All information used to determine eligibility for services pursuant to He-M 522.05, He-M 522.06 and He-M 522.07;

(3) Information about the individual that would be essential in case of an emergency, including:

- a. The name, address, and telephone number of the legal guardian or next of kin or other person to be notified;
- b. The names, addresses, and telephone numbers of current service providers;
- c. Medical information, including the individual's:
  1. Diagnosis(es);
  2. Health history;
  3. Allergies;
  4. Do not resuscitate (DNR) orders, as appropriate; and
  5. Advance directives, as determined by the individual;

(4) Copies of correspondence within the past year with the individual and guardian, service providers, physicians, attorneys, state and federal agencies, family members, and others in the individual's life;

(5) Other correspondence or memoranda concerning any significant events in the individual's life; and

(6) Information about transfer or termination of services, as appropriate.

(c) All entries made into an individual record shall be legible and dated and have the author identified by name and position.

(d) In addition to the documentation requirements identified in He-M 522, each area agency shall comply with all applicable documentation requirements of other bureau rules.

(e) Each area agency shall:

(1) Retain records supporting each Medicaid bill for a period of not less than 6 years; and

(2) Retain an individual's social history, medical history, evaluations, and any court-related documentation for a period of not less than 6 years after termination of services.

(f) For those receiving Medicaid home- and community-based care services, the record shall additionally contain, as applicable, a copy of:

(1) The individual's current service agreement;

(2) All service agreement amendments;

(3) Progress notes on goals and support services provided as identified in the service agreement;

(4) All service coordination contact notes and quarterly assessments pursuant to He-M 522.12 (g) (2)-(4); and

(5) Evaluations and reviews by providers and professionals.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

#### He-M 522.14 Record Requirements for Provider Agencies.

(a) Provider agencies shall maintain a separate record for each individual who receives Medicaid home- and community-based care services and ensure the confidentiality of information pertaining to the individual, including:

(1) Maintaining the confidentiality of any personal data in the records;

(2) Storing and disposing of records in a manner that preserves confidentiality; and

(3) Obtaining a release of information pursuant to He-M 522.04 (f) prior to release of any part of a record to a third party.

(b) An individual's record shall include:

(1) Personal and identifying information including the individual's:

a. Name;

b. Address;

c. Date of birth; and

d. Telephone number;

(2) Information about the individual that would be essential in case of an emergency, including:

a. The name, address, and telephone number of the legal guardian or next of kin or other person to be notified;

b. The names, addresses, and telephone numbers of current service providers; and

c. Medical information, including the individual's:

1. Diagnosis(es);

2. Health history;

3. Current medications;

4. Allergies;

5. Do not resuscitate (DNR) orders, as appropriate; and

6. Advance directives, as determined by the individual;

(3) A copy of the individual's current service agreement;

(4) Copies of all service agreement amendments;

(5) Progress notes on goals and support services provided as identified in the service agreement;

(6) Copies of evaluations and reviews by providers and professionals that are relevant to the individual's current needs;

(7) Copies of provider correspondence within the past year with the individual and guardian, service providers, physicians, attorneys, state and federal agencies, family members, and others in the individual's life;

(8) Any other correspondence involving the individual and the provider agency; and

(9) Information about transfer or termination of services, as appropriate.

(c) All entries made into an individual record shall be legible and dated and have the author identified by name and position.

(d) In addition to the documentation requirements identified in He-M 522, each provider agency shall comply with all applicable documentation requirements of other bureau rules.

(e) Each provider agency shall:

(1) Retain records supporting each Medicaid bill for a period of not less than 6 years; and

(2) Retain an individual's social history, medical history, evaluations, and any court-related documentation for a period of not less than 6 years after termination of services.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

He-M 522.15 Allocation of Funds for Current and Future Individual Service Requests.

(a) All services covered by He-M 522 shall be provided to the extent that funds for this purpose are available and appropriated to the bureau by the Legislature.

(b) For each applicant found eligible for Medicaid home- and community-based services, the area agency shall seek funding upon completion of the preliminary recommendation process pursuant to He-M 522.08. Unless the area agency makes a request for advanced crisis funding pursuant to (k)-(m) below, the bureau, subject to He-M 522.15 (a), shall allocate funding within 90 days of the preliminary service recommendation or within 90 days of start date requested by the individual or guardian, whichever is later.

(c) For individuals who are already receiving Medicaid home- and community-based care services, if additional services are needed, the area agency shall request such funding and, subject to He-M 522.15 (a), the bureau shall approve it within 90 days of amendment of the individual service agreement or within 90 days of the start date requested by the individual, whichever is later, unless the area agency makes a request for advanced crisis funding pursuant to (k)-(m) below.

(d) Each area agency shall maintain a projected service needs list for:

(1) Individuals who:

- a. Are newly eligible;
- b. Do not require services currently; and
- c. Will need services later within the current or following fiscal years; and

(2) Individuals who:

- a. Are receiving services; and
- b. Will need additional services later within the current or following fiscal years.

(e) Each area agency shall maintain a wait list for those individuals for whom funding is not available in accordance with (a) above and who:

(1) Do not qualify for services under (k)-(m) below; and

(2) Either:

- a. Do not receive services but need and are ready to receive services; or
- b. Currently receive services and need and are ready to utilize additional services.

(f) Each area agency shall include the following information on its wait list and projected service needs list:

- (1) The name and date of birth of the individual;
- (2) The diagnosis that identifies the individual's acquired brain disorder;
- (3) A brief description of the individual's circumstances and the services he or she needs;
- (4) The type and amount of services received, if any;
- (5) A preliminary estimate of cost;
- (6) The date by which services are needed; and
- (7) The date the individual's name went on the wait list or projected service needs list.

(g) Each area agency shall report to the bureau quarterly:

- (1) On the wait list pursuant to (e) above; and
- (2) On the projected service needs list pursuant to (d) above.

(h) To access the wait list funds appropriated for a given fiscal year, the area agency shall submit to the bureau a single list with the names of:

- (1) All individuals on its wait list; and
- (2) Those individuals on the projected service needs list who will be ready to receive services in that fiscal year.

(i) In submitting its list pursuant to (h) above, the area agency shall prioritize each individual's standing on the list by determining the individual's urgency of need based on the following factors:

- (1) Current type or level of services does not provide the assistance and environment to meet all the individual's needs;
- (2) Declining health of the caregiver;
- (3) Declining health of the individual;
- (4) Individual with no day services while living with a caregiver;
- (5) Individual's low safety awareness;
- (6) Individual's behavioral challenges;
- (7) Individual's involvement in the legal system;
- (8) Individual living in or at risk of going to an institutional setting;
- (9) Significant regression in individual's overall skills such that the individual's level of independence is diminished; and



(10) Length of time on the wait list as compared to others.

(j) In maintaining its wait list and projected service needs list, the area agency shall exclude those circumstances where funds might be needed to cover additional expenditures, such as cost-of-living or other wage and compensation increases.

(k) For individuals eligible for Medicaid home- and community-based care services or currently receiving such services, an area agency shall request advanced crisis funding to provide services without delay when there are no generic or area agency resources available and an individual is experiencing a significant life change pursuant to (l) below.

(l) An individual shall be considered to be experiencing a significant life change if he or she is:

- (1) A victim of abuse or neglect pursuant to He-E 700 or He-M 202;
- (2) Abandoned and homeless;
- (3) Without a caregiver due to death or incapacitation;
- (4) At significant risk of physical or psychological harm due to decline in his or her medical or behavioral status; or
- (5) Presenting a significant risk to his or her own or the community's safety due to involvement with the legal system.

(m) To demonstrate the need for advanced crisis funding, the area agency shall submit to the bureau, in writing, a detailed description of the individual's circumstances and needs and a proposed budget.

(n) The bureau shall review the information submitted by the area agency and approve advanced crisis funding if it determines that one of the conditions cited in (l) above applies to the individual's situation.

(o) For each request an area agency makes for funding individual services, the bureau shall make the final determination on the cost effectiveness of proposed services.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10

#### He-M 522.16 Transfers Across Regions.

(a) If an individual plans to relocate residency to another region and wishes to transfer his or her area agency affiliation to that region, the individual or guardian shall notify in writing the area agency in the current region and the area agency in the proposed region that he or she is moving and wishes to transfer services.

(b) The current area agency shall send to the proposed area agency all information regarding the individual, including information concerning funding for the individual's services.

(c) The current area agency shall transfer to the proposed area agency all funds being spent for the individual's services, including funds allocated for administrative costs, with the exception of regional family support state funds.

(d) Service coordinators shall coordinate individual transfers so that benefits obtained from third party resources such as Medicaid and the division of vocational rehabilitation shall not be lost or delayed during the transition from one region to another.

Source. #7120, eff 10-20-99; ss by #8974, INTERIM, eff 10-6-07, EXPIRED: 4-3-08

New. #9734, eff 6-25-10 (from He-M 522.12)

He-M 522.17 Termination of Services.

(a) Any person may make a recommendation for termination of service(s) to an individual. Any such recommendation shall be made in writing to the area agency director.

(b) If termination of services is being considered, the service coordinator shall meet with the individual or guardian, or both, to discuss the reasons for the recommended termination.

(c) A recommendation for termination shall be based on any of the following:

- (1) The individual does not require such service(s);
- (2) Services are no longer necessary because they have been replaced by other supports or services; or
- (3) The individual no longer meets eligibility under He-M 522.03 or He-M 517.03.

(d) Within 10 business days of receipt of a recommendation for termination of services, an area agency director shall cause a meeting of the service coordinator, the individual or guardian, or both, and the service provider(s) to be convened to review the request. The purpose of the meeting shall be to determine if any of the criteria listed in (c) above apply to the individual.

(e) Based on the information presented and determinations made at the meeting, the service coordinator shall prepare a written report for the area agency director that sets forth one of the following:

- (1) A statement of concurrence with the recommendation for termination;
- (2) A recommendation for continuance; or
- (3) Changes to the individual's service agreement.

(f) The area agency director shall make the final decision regarding termination based on the criteria listed in (c) above.

(g) If a decision is made to terminate services pursuant to (f) above, the area agency director shall, within 30 days of the decision, send a termination notice to the individual or guardian outlining a 12 month phase out period. Service may be terminated sooner with the consent of the individual or guardian. The individual or guardian may appeal the termination decision in accordance with He-C 200.

(h) In each termination notice the area agency shall provide information on the reason for termination, the right to appeal, and the process for appealing the decision, including the names, addresses, and phone numbers of the office of client and legal services of the bureau and advocacy organizations, such as the New Hampshire Disabilities Rights Center, which the individual or guardian may contact for assistance in appealing the decision.

(i) An individual whose services have been terminated may request resumption of services if he or she believes that the reasons for the termination of services no longer apply. Such a request shall be made by the individual or guardian, in writing, to the area agency director.

(j) Upon request of the individual or guardian, the area agency director shall resume services to an individual whose services have been terminated if the criteria in (c) above no longer apply, to the extent that funds for this purpose are available and appropriated to the bureau by the Legislature.

(k) Individuals who have been terminated pursuant to (c)(3) above and request resumption of services shall reapply in accordance with He-M 522.04.

[Source.](#) #9734, eff 6-25-10 (from He-M 522.13)

#### He-M 522.18 Voluntary Withdrawal from Services.

(a) An individual or guardian may withdraw voluntarily from any service(s) at any time.

(b) The administrator of the service from which withdrawal is made shall notify the area agency in writing of the withdrawal and so indicate in the individual's record when such withdrawal was contrary to the individual's service agreement.

(c) If service staff or a service coordinator for an individual determine that withdrawal from a service might constitute abuse, neglect, or exploitation on the part of a guardian, the staff or service coordinator shall report such abuse, neglect, or exploitation as required by law.

(d) If an individual does not have a guardian and his or her service coordinator or any other person believes that the individual is not able to make an informed decision to withdraw from services and might suffer harm as a result of abuse, neglect, or exploitation, the area agency shall pursue the least restrictive protective means including, as appropriate, guardianship to address the situation.

(e) An individual who has withdrawn from services may request resumption of services at any time. Such a request shall be made by the individual or guardian, in writing, to the area agency director.

(f) Upon request of the individual or guardian, the area agency director shall resume services to the individual to the extent that funds for this purpose are available and appropriated to the bureau by the Legislature. If there is reason to believe that the individual's eligibility status has changed, the area agency shall request a reapplication pursuant to He-M 522.03.

[Source.](#) #9734, eff 6-25-10 (from He-M 522.14)

#### He-M 522.19 Challenges and Appeals.

(a) An individual or guardian may choose to pursue informal resolution to resolve any disagreement with an area agency or, within 30 business days of the area agency decision, she or he may choose to file a formal appeal. Any determination, action, or inaction by an area agency may be appealed by an individual or guardian.

(b) The following actions shall be subject to the notification requirements of (c) below:

(1) Adverse eligibility actions under He-M 522.05 (g), He-M 522.06 (b), and He-M 522.07 (b);

(2) Area agency determinations regarding an individual's or guardian's selection of provider under He-M 522.09 (f) or removal of provider under He-M 522.09 (g) and (h);

(3) Area agency determinations regarding the removal of an individual or guardian's selected service coordinator under He-M 522.10 (e) (2) and (3); or

(4) A determination to terminate services under He-M 522.17 (f).

(c) An area agency shall provide written and verbal notice to the applicant and guardian of the actions specified in (b) above, including:

(1) The specific facts and rules that support, or the federal or state law that requires, the action;

(2) Notice of the individual's right to appeal in accordance with He-C 200 within 30 business days and the process for filing an appeal, including the contact information to initiate the appeal with the bureau administrator;

(3) Notice of the individual's continued right to services pending appeal, when applicable, pursuant to (f) below;

(4) Notice of the right to have representation with an appeal by:

a. Legal counsel;

b. A relative;

c. A friend; or

d. Another spokesperson;

(5) Notice that neither the area agency nor the bureau is responsible for the cost of representation; and

(6) Notice of organizations, with their addresses and phone numbers, that might be available to provide pro bono or reduced fee legal assistance and advocacy, including the Disabilities Rights Center.

(d) Appeals shall be forwarded, in writing, to the bureau administrator in care of the department's office of client and legal services. An exception shall be that appeals may be filed verbally if the individual is unable to convey the appeal in writing.

(e) The bureau administrator shall immediately forward the appeal to the department's administrative appeals unit which shall assign a presiding officer to conduct a hearing or independent review, as provided in He-C 200. The burden shall be as provided by He-C 203.14.

(f) If a hearing is requested, the following actions shall occur:

(1) For current recipients, services and payments shall be continued as a consequence of an appeal for a hearing until a decision has been made; and

(2) If the bureau's decision is upheld:

a. Benefits shall cease 60 days from the date of the denial letter or 30 days from the hearing decision, whichever is later; or

b. In the instance of termination of services, services shall cease one year after the initial decision to terminate services or 30 days from the hearing decision, whichever is later.

[Source.](#) #9734, eff 6-25-10 (from He-M 522.15)

He-M 522.20 Waivers.

(a) An area agency, provider agency, or individual may request a waiver of specific procedures outlined in He-M 522 using the form titled “NH bureau of developmental services waiver request.”

(b) A completed waiver request form shall be signed by:

- (1) The individual(s) or legal guardian(s) indicating agreement with the request; and
- (2) The area agency’s executive director or designee recommending approval of the waiver.

(c) A waiver request shall be submitted to:

Department of Health and Human Services  
Office of Client and Legal Services  
Hugh J. Gallen State Office Park  
105 Pleasant Street, Main Building  
Concord, NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the provider agency meets the objective or intent of the rule and it:

- (1) Does not negatively impact the health or safety of the individual(s); and
- (2) Does not affect the quality of services to individuals.

(f) The determination on the request for a waiver shall be made within 30 days of the receipt of the request.

(g) Upon receipt of approval of a waiver request, the area agency’s, provider agency’s, or individual’s subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(h) Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in (i) below.

(i) Any waiver shall end with the closure of the related program or service.

(j) An area agency, provider agency, or individual may request a renewal of a waiver from the department. Such request shall be made at least 90 days prior to the expiration of a current waiver.

[Source.](#) #9734, eff 6-25-10 (from He-M 522.16)